

FILED

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

SERGIO GONZALEZ ROSAS;
ELVA SUSANA GONZALEZ,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-76840

Agency Nos. A96-066-297
A96-066-298

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 24, 2006 ^{**}

Before: PREGERSON, TALLMAN and CALLAHAN, Circuit Judges.

The Clerk shall amend the docket to include petitioner Elva Susana
Gonzalez's Agency Number, A96-066-298.

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Respondent's opposed motion to summarily deny in part and dismiss in part is granted. Summary disposition is appropriate as to petitioner Elva Susana Gonzalez because her lack of ten years continuous physical presence in the United States for cancellation of removal raises no substantial questions requiring further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). Dismissal as to petitioner Sergio Gonzalez Rosas is appropriate because he raises no colorable constitutional claim as to the agency's discretionary determination of lack of exceptional and extremely unusual hardship. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001); *Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003).

All other pending motions are denied as moot. The temporary stay of removal and voluntary departure confirmed by Ninth Circuit General Order 6.4(c) and *Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004), shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DISMISSED IN PART and DENIED IN PART.

PREGERSON, Circuit Judge, dissenting:

I dissent. This case, and the sixty-four others like it filed today, will have an adverse effect on children born in the United States whose parent/parents are illegal immigrants. When a parent is denied cancellation of removal, the government effectively deports the United States-born children of that parent. This unconscionable result violates due process because circumstances will force children to suffer de facto expulsion from the country of their birth or forego their constitutionally protected right to remain in this country with their family intact. *See, e.g., Moore v. City of E. Cleveland*, 431 U.S. 494, 503-05 (1977) (plurality opinion) (“Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.”); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (recognizing that “[t]he integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment”).

Furthermore, as a nation we should recognize that many children born of illegal immigrants serve and have served with honor and distinction in our military forces, and many have laid down their lives on the altar of freedom.